
HOUSE BILL No. 1788

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-4-5.2; IC 5-21-7; IC 6-3.1-25; IC 6-7; IC 24-3-2.

Synopsis: Technology credit; sale of tobacco. Creates the emerging technology grant fund to be administered by the department of commerce. Appropriates \$5,000,000 to the fund. Requires the intelenet commission to establish an Internet portal to assist technology oriented entrepreneurs in the development and marketing of technology products and services. Establishes a technology commercialization tax credit against state tax liability. Provides that a cigarette distributor who has five consecutive years of good credit standing with the state is not required to post a bond as a condition of paying for revenue stamps within 30 days of the purchase date. Prohibits a distributor from affixing a tax stamp to a cigarette package containing cigarettes from a tobacco product manufacturer that has not complied with the master settlement agreement. Specifies that the alcohol and tobacco commission shall enforce the cigarette fair trade act. Requires the consumer protection division of the office of the attorney general to maintain a cigarette listing containing the names of all cigarette distributors that hold a registration certificate and all tobacco product manufacturers that are in compliance with the tobacco settlement. Makes it a Class C infraction for a retailer to possess cigarettes without an invoice or other evidence that the cigarettes were purchased from a legitimate distributor or manufacturer, and permits the state to seize undocumented cigarettes.

Effective: July 1, 2003.

Hasler

January 21, 2003, read first time and referred to Committee on Ways and Means.



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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1788

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations and consumer sales and credit and to make an appropriation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-4-5.2 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2003]:

4 **Chapter 5.2. Emerging Technology Grant Fund**

5 **Sec. 1. As used in this chapter, "fund" means the emerging**
6 **technology grant fund established by section 2 of this chapter.**

7 **Sec. 2. (a) The emerging technology grant fund is established to**
8 **provide grants to match federal grants for companies to be used to**
9 **accelerate the commercialization of emerging technologies.**

10 **(b) The purpose of the grants is to assist Indiana companies to**
11 **compete nationally for federal research and development awards**
12 **and to provide matching grants that focus on small technology**
13 **based companies in industry sectors vital to the state's economic**
14 **growth. Companies included must be engaged in enhancing:**

- 15 (1) life sciences;
16 (2) information technology;



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(3) advanced manufacturing; or

(4) logistics.

(c) Grants shall be used to support projects that leverage private sector, federal, and state resources to create new globally competitive commercial products or services that will enhance economic growth and job creation in Indiana. Only companies that receive federal awards may receive grants from the fund.

Sec. 3. The Indiana twenty-first century research and technology fund board shall administer the grant program.

Sec. 4. The fund consists of appropriations from the general assembly and gifts and grants to the fund.

Sec. 5. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

Sec. 6. The money in the fund at the end of a state fiscal year does not revert to the state general fund but remains in the fund to be used exclusively for the purposes of this chapter.

Sec. 7. Money in the fund is continually appropriated.

SECTION 2. IC 5-21-7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]:

Chapter 7. Technology Portal

Sec. 1. The commission shall implement through the intelenet system a state of the art technology web portal for technology oriented entrepreneurs.

Sec. 2. The portal must be designed in a manner that provides in a highly usable format all the information a technology oriented entrepreneur reasonably needs to develop, launch, and improve technology based products and services in Indiana.

Sec. 3. The portal must:

(1) link all the available technology and entrepreneurial resources in Indiana;

(2) have specific information concerning:

(A) available funding sources;

(B) technology transfer ideas and competencies; and

(C) available workforce resources;

(3) list the top technology transfer ideas available from colleges, universities, and businesses for entrepreneurial commercialization in Indiana;

(4) direct users to:

(A) local economic development portals; and

(B) chat rooms oriented toward technology oriented

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1 entrepreneurs; and
 2 (5) assist in matching intellectual capital with workplace
 3 opportunities.

4 Sec. 4. The department of workforce development and the
 5 department of commerce shall assist the commission as necessary
 6 to implement this chapter.

7 Sec. 5. The commission may enter into agreements with any
 8 Indiana college or university that has:

- 9 (1) a degree program in entrepreneurship; or
 10 (2) other relevant resources;

11 to assist in implementing this chapter.

12 SECTION 3. IC 6-3.1-25 IS ADDED TO THE INDIANA CODE
 13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2003]:

15 **Chapter 25. Technology Commercialization Tax Credit**

16 Sec. 1. The general assembly makes the following findings:

17 (1) Indiana is making investments in college and university
 18 research but has an insufficient strategy for commercializing
 19 the resulting technologies.

20 (2) College and university professors often take their research
 21 and leave Indiana to create new companies and new jobs
 22 elsewhere, depriving the college or university of a creative
 23 and valued faculty member and Indiana of the ability to
 24 benefit from homegrown economic development potential.

25 Sec. 2. This chapter is intended to achieve the following
 26 purposes:

27 (1) To induce companies purchasing the rights to
 28 commercialize technology produced at an Indiana college or
 29 university to locate and grow their businesses in Indiana.

30 (2) To expand the economy of Indiana by enlarging its base of
 31 technology and research based businesses.

32 (3) To enlarge the number of quality jobs available to an
 33 educated workforce in order to retain young people educated
 34 in Indiana colleges and universities.

35 (4) To attract to Indiana colleges and universities and retain
 36 the finest research faculty.

37 Sec. 3. As used in this chapter, "commercialization costs" means
 38 investment:

- 39 (1) in machinery and equipment; and
 40 (2) all expenditures associated with obtaining the rights to use
 41 or the use of technology, including fees related to patents,
 42 copyrights, and licenses.

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1 **Sec. 4. As used in this chapter, "machinery and equipment"**
 2 **means machinery or equipment that is:**

- 3 (1) a capital asset used in a trade or business;
 4 (2) subject to depreciation under the Internal Revenue Code;
 5 and
 6 (3) placed in service and used in Indiana.

7 **Sec. 5. As used in this chapter, "pass through entity" means:**

- 8 (1) a corporation that is exempt from the adjusted gross
 9 income tax under IC 6-3-2-2.8(2); or
 10 (2) a:
 11 (A) partnership;
 12 (B) trust;
 13 (C) limited liability company; or
 14 (D) limited liability partnership;

15 **that is not taxed as a corporation under IC 6-3.**

16 **Sec. 6. As used in this chapter, "taxpayer" means a person,**
 17 **corporation, or pass through entity that seeks to or has become**
 18 **qualified to claim a tax credit under this chapter.**

19 **Sec. 7. As used in this chapter, "taxpayer applicant" means a**
 20 **taxpayer that qualifies for, applies for, and is awarded technology**
 21 **commercialization tax credits based on an investment in**
 22 **commercialization costs, as required by this chapter.**

23 **Sec. 8. As used in this chapter, "taxpayer claimant" means the**
 24 **taxpayer that claims the technology commercialization tax credit**
 25 **in conformity with this chapter against tax liability.**

26 **Sec. 9. As used in this chapter, "technology" means:**

- 27 (1) the product or intellectual property owned or research
 28 sponsored by a regionally accredited college, technical school,
 29 or university located in Indiana; or
 30 (2) any product or intellectual property to which significant
 31 development or enhancement occurred at a regionally
 32 accredited college, technical school, or university located in
 33 Indiana.

34 **Sec. 10. As used in this chapter, "state tax liability" means tax**
 35 **liability for any of the following:**

- 36 (1) Adjusted gross income tax (IC 6-3).
 37 (2) Financial institutions tax (IC 6-5.5).
 38 (3) Premiums tax (IC 27-1-18-2).

39 **Sec. 11. Qualifying persons, corporations, and pass through**
 40 **entities that invest in the commercialization of Indiana technology**
 41 **in Indiana may earn, apply for, and be granted a tax credit against**
 42 **state tax liability under this chapter.**

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1 **Sec. 12.** The administration of applications for these credits and
 2 the provision of these credits shall be called the technology
 3 commercialization tax credit program.

4 **Sec. 13.** The technology commercialization tax credit program
 5 shall be implemented and administered by the department of
 6 commerce. Under IC 4-22-2 and this chapter, the department of
 7 commerce shall adopt the rules that are necessary for the efficient
 8 and effective administration of this program in keeping with the
 9 purposes for which it is enacted.

10 **Sec. 14.** In providing for the implementation and administration
 11 of the program, the department of commerce shall work closely
 12 with the department of state revenue.

13 **Sec. 15.** The rules must include provisions for the following:

14 (1) Provisions for the department of commerce to certify:

15 (A) the eligibility of a taxpayer applicant for receipt of the
 16 technology commercialization tax credit provided by this
 17 chapter; and

18 (B) the qualification of a taxpayer claimant to claim the
 19 credit against state tax liability.

20 (2) Provisions for the presentation of a taxpayer's eligibility
 21 certification and any other documentation required to apply
 22 for and earn a tax credit.

23 (3) Provisions governing the sale of certified technology
 24 commercialization tax credits to other taxpayers.

25 **Sec. 16.** To qualify for a technology commercialization tax credit
 26 for commercialization costs incurred by the taxpayer in the four
 27 (4) taxable years beginning with the first taxable year in which
 28 machinery and equipment is placed in service in Indiana, an
 29 applicant must meet all the following qualifications:

30 (1) The applicant must incur commercialization costs for a
 31 trade or business conducted by the taxpayer.

32 (2) The applicant's commercialization costs must include an
 33 investment by purchase or lease of machinery and equipment
 34 that:

35 (A) is placed and maintained in service in Indiana; and

36 (B) is used:

37 (i) in a manner that is directly related to the production
 38 of technology; or

39 (ii) to produce resources essential to the production of
 40 technology.

41 (3) The applicant's commercialization costs must equal at
 42 least two hundred fifty thousand dollars (\$250,000) in the first

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1 taxable year that machinery and equipment is placed in
2 service in Indiana.

3 (4) The applicant's commercialization costs must be at least
4 two million dollars (\$2,000,000) before the end of the fourth
5 taxable year in which the taxpayer is eligible for the
6 technology commercialization tax credit.

7 Sec. 17. To qualify for a technology commercialization tax credit
8 for four (4) additional taxable years immediately succeeding the
9 first four (4) taxable years provided under section 16 of this
10 chapter, the applicant must invest at least two hundred fifty
11 thousand dollars (\$250,000) in each succeeding taxable year in
12 commercialization costs for the production of:

13 (1) technology; or

14 (2) resources essential to the production of technology.

15 Sec. 18. A taxpayer is ineligible for a technology
16 commercialization tax credit for more than eight (8) consecutive
17 taxable years with regard to the same business location.

18 Sec. 19. A technology commercialization tax credit is not
19 available in a taxable year in which machinery and equipment in
20 which an investment is made is not in regular service in Indiana.
21 The interruption of service, as determined under the rules of the
22 department of commerce, does not terminate the eligibility for any
23 further credit under this chapter in any subsequent tax year.

24 Sec. 20. A technology commercialization tax credit is not
25 available in a taxable year for an investment for which any other
26 tax credit based on research and development, as determined
27 under the rules adopted by the department of commerce, is applied
28 to state tax liability.

29 Sec. 21. (a) A taxpayer applicant that:

30 (1) earns, applies for, and is granted a credit under section 16
31 of this chapter; and

32 (2) fails to make at least two million dollars (\$2,000,000) in
33 investment in commercialization costs, including machinery
34 and equipment by the end of the third taxable year after the
35 first taxable year in which the machinery and equipment is
36 placed in service;

37 is subject to subsection (b).

38 (b) The taxpayer applicant:

39 (1) must repay to the department of state revenue the amount
40 of all technology commercialization tax credits claimed and
41 credited against state tax liability;

42 (2) forfeits any carry forward of other technology

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commercialization tax credits earned and retained for future use; and

(3) is liable to the state for the price obtained for any technology commercialization tax credits sold.

(c) The amount due under this section shall be treated as a liability for a listed tax that is due for the third taxable year after the machinery and equipment is placed in service.

Sec. 22. (a) A taxpayer applicant that:

(1) earns, applies for, and is granted a credit under section 16 of this chapter; and

(2) fails to make at least two hundred fifty thousand dollars (\$250,000) of investment by the end of each taxable year in which a tax credit is granted;

is subject to subsection (b).

(b) The taxpayer applicant:

(1) is not eligible for any technology commercialization tax credit in that taxable year;

(2) must repay any amounts allowed as a technology commercialization tax credit for that taxable year; and

(3) ceases to qualify for any further technology commercialization tax credits for investment in that location.

(c) The amount due under this section shall be treated as a liability for a listed tax due for the taxable year in which the taxpayer fails to make the required investment.

Sec. 23. Except as provided in section 24 of this chapter, a taxpayer applicant that the department of commerce certifies is eligible for a technology commercialization tax credit is entitled to a technology commercialization tax credit against state tax liability. The amount of the credit in any taxable year is equal to fifteen percent (15%) of the amount of money invested by the taxpayer applicant in commercialization costs for one (1) business location.

Sec. 24. Whenever a tax credit is claimed against state tax liability, whether by the taxpayer applicant or by a subsequent taxpayer claimant, the total of all credits applied in any taxable year may not exceed fifty percent (50%) of the total of all state tax liability due by the taxpayer in that taxable year after reduction of the amount by the sum of all other credits allowed against the tax, except any tax payments made by or on behalf of the taxpayer.

Sec. 25. If the amount of the technology commercialization tax credit, after applying any part of the credit that is carried forward from a prior taxable year, is greater than the taxpayer's state tax

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liability for the taxable year, the taxpayer claimant may carry forward the unused part of the credit to not more than twenty-one (21) subsequent taxable years. The amount of the tax credit that is applied to the taxpayer claimant's state tax liability reduces the amount of the credit that may be carried forward to a subsequent taxable year. A taxpayer claimant is not eligible to carry back or obtain a refund of any unused credit.

Sec. 26. (a) If a pass through entity does not have state tax liability against which the technology commercialization tax credit may be applied, a shareholder, partner, or member of the pass through entity is entitled to a technology commercialization tax credit equal to:

- (1) the credit determined for the pass through entity for the taxable year; multiplied by
- (2) the percentage of the pass through entity's distributive income to which the shareholder, partner, or member is entitled.

(b) The credit provided under subsection (a) is in addition to a credit to which a shareholder, partner, or member of a pass through entity is otherwise entitled under this chapter. However, a pass through entity and a shareholder, partner, or member of the pass through entity may not claim a credit under this chapter for the same investment.

Sec. 27. Taxpayer applicants that meet all of the following qualifications, as certified by the department of commerce, may sell all or any unused part of its technology commercialization tax credits to other taxpayers for use in the taxable year in which they are sold or for use in a future taxable year:

- (1) The taxpayer applicant is identified as a business in one (1) of the following business activities:
 - (A) Advanced manufacturing.
 - (B) Information technology.
 - (C) Life sciences.
 - (D) Indiana twenty-first century logistics.
- (2) The taxpayer applicant has not more than two hundred twenty-five (225) employees in the taxable years that the tax credits are earned and the taxable years that the tax credits are sold.
- (3) At least seventy-five percent (75%) of all employees at the business location where the tax credits are earned are Indiana residents.

Sec. 28. In selling technology commercialization tax credits



1 granted to them, the taxpayer applicants shall sell them for at least
 2 seventy-five percent (75%) of the value of the technology
 3 commercialization tax credits.

4 **Sec. 29. The purchaser of unused credits shall apply the credits**
 5 **in the same manner and against the same taxes as the taxpayer**
 6 **applicant.**

7 **Sec. 30. To receive the credit provided by this chapter, a**
 8 **taxpayer claimant must claim the credit on the person's or**
 9 **corporation's annual state tax return or returns in the manner**
 10 **prescribed by the department of state revenue. The person or**
 11 **corporation shall submit to the department of state revenue all**
 12 **information that the department of state revenue determines is**
 13 **necessary for the calculation of the credit provided by this chapter**
 14 **and for the determination of whether the person or corporation is**
 15 **eligible for the credit. The department of state revenue may**
 16 **require a pass through entity to provide all information necessary**
 17 **to determine the amount of the credit to which a shareholder,**
 18 **partner, or member is entitled.**

19 SECTION 4. IC 6-7-1-17, AS AMENDED BY P.L.192-2002(ss),
 20 SECTION 136, IS AMENDED TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) Distributors who hold
 22 certificates and retailers shall be agents of the state in the collection of
 23 the taxes imposed by this chapter and the amount of the tax levied,
 24 assessed, and imposed by this chapter on cigarettes sold, exchanged,
 25 bartered, furnished, given away, or otherwise disposed of by
 26 distributors or to retailers. Distributors who hold certificates shall be
 27 agents of the department to affix the required stamps and shall be
 28 entitled to purchase the stamps from the department at a discount of
 29 one and two-tenths percent (1.2%) of the amount of the tax stamps
 30 purchased, as compensation for their labor and expense.

31 (b) The department may permit distributors who hold certificates
 32 and who are admitted to do business in Indiana to pay for revenue
 33 stamps within thirty (30) days after the date of purchase. However, the
 34 privilege is extended upon the express condition that:

35 (1) except as provided in subsection (c), a bond or letter of credit
 36 satisfactory to the department, in an amount not less than the sales
 37 price of the stamps, is filed with the department; and

38 (2) proof of payment is made of all local property, state income,
 39 and excise taxes for which any such distributor may be liable. The
 40 bond or letter of credit, conditioned to secure payment for the
 41 stamps, shall be executed by the distributor as principal and by a
 42 corporation duly authorized to engage in business as a surety



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company or financial institution in Indiana.

(c) If

(1) there is an increase in the amount of the tax imposed upon cigarettes under this chapter; and

(2) a distributor has at least five (5) consecutive years of good credit standing with the state, as of the effective date of the tax increase described in subdivision (1);

the amount of the bond required by subsection (b)(1) remains the same as before the increase in the tax on cigarettes took effect: **the distributor shall not be required to post a bond or letter of credit under subsection (b).**

SECTION 5. IC 6-7-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. **(a) Except as provided in subsection (b),** every distributor, upon the receipt of cigarettes taxed under this chapter, shall cause each individual package to have the requisite denomination and amount of stamps firmly affixed. Every retailer, upon receipt of cigarettes not having the proper amount of stamps firmly affixed, to each individual package, or stamped by a meter stamping machine, by a distributor shall stamp or firmly affix stamps immediately on each individual package. Provided, however, that any distributor engaged in interstate business, shall be permitted to set aside such part of his stock as may be necessary for the conduct of such interstate business without affixing the stamps required by this chapter. Every distributor, at the time of shipping or delivering any cigarettes, shall make a duplicate invoice, showing complete details of each transaction, and shall retain the duplicate subject to the inspection by the department or its agent.

(b) A distributor may not stamp or affix a tax stamp to a cigarette package containing cigarettes from a tobacco product manufacturer that has not complied with IC 24-3-3-12.

SECTION 6. IC 6-7-2-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 11. The department:

(1) may revoke or suspend a license issued under this chapter for any violation of this chapter **or of IC 6-7-1-18** by the licensee; and

(2) may not issue a license under this chapter to an applicant within six (6) months after the revocation of that applicant's license.

SECTION 7. IC 24-3-2-2, AS AMENDED BY P.L.204-2001, SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 2. Unless the context in this chapter requires otherwise, the term:



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(a) "Cigarette" shall mean and include any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any other material; provided the definition in this paragraph shall not be construed to include cigars.

(b) "Person" or the term "company", used in this chapter interchangeably, means and includes any individual, assignee, receiver, commissioner, fiduciary, trustee, executor, administrator, institution, bank, consignee, firm, partnership, limited liability company, joint vendor, pool, syndicate, bureau, association, cooperative association, society, club, fraternity, sorority, lodge, corporation, municipal corporation, or other political subdivision of the state engaged in private or proprietary activities or business, estate, trust, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

(c) "Distributor" shall mean and include every person who sells, barter, exchanges, or distributes cigarettes in the state of Indiana to retail dealers for the purpose of resale, or who purchases for resale cigarettes from a manufacturer of cigarettes or from a wholesaler, jobber, or distributor outside the state of Indiana who is not a distributor holding a registration certificate issued under the provisions of IC 6-7-1.

(d) "Retailer" shall mean every person, other than a distributor, who purchases, sells, offers for sale, or distributes cigarettes to consumers or to any person for any purpose other than resale, irrespective of quantity or amount or the number of sales.

(e) "Sell at retail", "sale at retail", and "retail sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of the seller's business to the purchaser for consummation or use.

(f) "Sell at wholesale", "sale at wholesale", and "wholesale sales" shall mean and include any transfer of title to cigarettes for a valuable consideration made in the ordinary course of trade or usual conduct of a distributor's business.

(g) "Basic cost of cigarettes" shall mean the invoice cost of cigarettes to the retailer or distributor, as the case may be, or the replacement cost of cigarettes to the retailer or distributor, as the case may be, within thirty (30) days prior to the date of sale, in the quantity last purchased, whichever is the lower, less all trade discounts and customary discounts for cash, plus the cost at full face value of any

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1 stamps which may be required by IC 6-7-1, if not included by the
2 manufacturer in his selling price to the distributor.

3 (h) "Department" shall mean the alcohol and tobacco commission,
4 ~~or its duly authorized assistants and employees. and any other board,~~
5 ~~commission, agency, or other entity of the state of Indiana which may~~
6 ~~be designated by the governor to administer and enforce the provisions~~
7 ~~of this chapter, and the governor is hereby vested with power and~~
8 ~~authority to designate and to transfer to another department, board,~~
9 ~~commission, agency, or other entity of the state of Indiana the~~
10 ~~administration and enforcement of the provisions of this chapter.~~

11 (i) "Cost to the retailer" shall mean the basic cost of cigarettes to the
12 retailer, plus the cost of doing business by the retailer as evidenced by
13 the standards and methods of accounting regularly employed by him in
14 his allocation of overhead costs and expenses paid or incurred and must
15 include without limitation labor (including salaries of executives and
16 officers), rent, depreciation, selling costs, maintenance of equipment,
17 delivery costs, all types of licenses, taxes, insurance, and advertising;
18 however, any retailer who, in connection with the retailer's purchase,
19 receives not only the discounts ordinarily allowed upon purchases by
20 a retailer, but also, in whole or in part, discounts ordinarily allowed on
21 purchases by a distributor shall, in determining costs to the retailer
22 pursuant to this section, add the cost to the distributor, as defined in
23 paragraph (j), to the basic cost of cigarettes to said retailer as well as
24 the cost of doing business by the retailer. In the absence of proof of a
25 lesser or higher cost of doing business by the retailer making the sale,
26 the cost of doing business by the retailer shall be presumed to be eight
27 percent (8%) of the basic cost of cigarettes to the retailer. In the
28 absence of proof of a lesser or higher cost of doing business, the cost
29 of doing business by the retailer, who in connection with the retailer's
30 purchase receives not only the discounts ordinarily allowed upon
31 purchases by a retailer, but also, in whole or in part, the discounts
32 ordinarily allowed upon purchases by a distributor, shall be presumed
33 to be eight percent (8%) of the sum of the basic cost of cigarettes plus
34 the cost of doing business by the distributor.

35 (j) "Cost to the distributor" shall mean the basic cost of cigarettes to
36 the distributor, plus the cost of doing business by the distributor as
37 evidenced by the standards and methods of accounting regularly
38 employed by him in his allocation of overhead costs and expenses, paid
39 or incurred, and must include without limitation labor costs (including
40 salaries of executives and officers), rent, depreciation, selling costs,
41 maintenance of equipment, delivery costs, all types of licenses, taxes,
42 insurance, and advertising. In the absence of proof of a lesser or higher

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1 cost of doing business by the distributor making the sale, the cost of
 2 doing business by the wholesaler shall be presumed to be four percent
 3 (4%) of the basic cost of cigarettes to the distributor, plus cartage to the
 4 retail outlet, if performed or paid for by the distributor, which cartage
 5 cost, in the absence of proof of a lesser or higher cost, shall be deemed
 6 to be one-half of one percent (0.5%) of the basic cost of cigarettes to
 7 the distributor.

8 **(k) "Registration certificate" refers to the registration**
 9 **certificate issued to cigarette distributors by the department of**
 10 **state revenue under IC 6-7-1-16.**

11 **(l) "Consumer protection division" means the consumer**
 12 **protection division of the office of the attorney general.**

13 **(m) "Cigarette listing" means the list maintained by the**
 14 **consumer protection division of cigarette distributors who possess**
 15 **a registration certificate.**

16 SECTION 8. IC 24-3-2-4.5 IS ADDED TO THE INDIANA CODE
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 18 1, 2003]: Sec. 4.5. (a) The cigarette listing is established. The
 19 cigarette listing must contain the names of the following:

20 (1) Every distributor that holds a valid registration certificate.

21 (2) Every tobacco product manufacturer that has complied
 22 with IC 24-3-3-12.

23 (b) The consumer protection division shall maintain the
 24 cigarette listing and update the cigarette listing at least one (1) time
 25 per calendar year.

26 (c) The consumer protection division shall make the cigarette
 27 listing available to the public by publishing the cigarette listing:

28 (1) on accessIndiana (as defined in IC 5-21-1-1.5); and

29 (2) as a paper document.

30 SECTION 9. IC 24-3-2-4.7 IS ADDED TO THE INDIANA CODE
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 32 1, 2003]: Sec. 4.7. (a) A retailer who is unable to produce an invoice
 33 or other documentary evidence proving that the retailer obtained
 34 cigarettes from:

35 (1) a distributor that holds a valid registration certificate; or

36 (2) tobacco product manufacturer that has complied with
 37 IC 24-3-3-12;

38 commits a Class C infraction.

39 (b) In addition to any other penalty described in this section, the
 40 department may seize the cigarettes for which the retailer is unable
 41 to produce the invoice or documentary evidence described in
 42 subsection (a). The seized cigarettes shall be forfeited to the state

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1 and destroyed.

2 (c) For purposes of this section, evidence that a distributor or
3 tobacco product manufacturer is listed in the cigarette listing for
4 the calendar year in which the sale of cigarettes occurred is
5 conclusive proof that the:

6 (1) distributor holds a valid registration certificate; or

7 (2) tobacco product manufacturer has complied with
8 IC 24-3-3-12.

9 SECTION 10. [EFFECTIVE JULY 1, 2003] (a) There is
10 appropriated to the emerging technology grant fund established
11 under IC 4-4-5.2-2, as added by this act, five million dollars
12 (\$5,000,000) from the state general fund for the use of the Indiana
13 twenty-first century research and technology fund board in
14 funding grants in the emerging technology grant fund for the
15 period beginning July 1, 2003, and ending June 30, 2004.

16 (b) This SECTION expires July 1, 2004.

17 SECTION 11. [EFFECTIVE JULY 1, 2003] IC 6-3.1-25, as added
18 by this act, applies only to taxable years beginning after December
19 31, 2003.

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